DATE: June 13, 1994
CASE NO. 84-ERA-13

IN THE MATTER OF

JOSEPH D. WAMPLER,

COMPLAINANT,

v.

PULLMAN-HIGGINS COMPANY,

RESPONDENT.

BEFORE: THE SECRETARY OF LABOR

ORDER DENYING MOTION FOR RECONSIDERATION

Before me for consideration is Respondent's Motion to Reconsider Secretary's Final Order Disapproving Settlement and Remanding Case (Motion), received on March 24, 1994, in the above-captioned case arising under the employee protection provision of the Energy Reorganization Act of 1974, as amended (ERA), 42 U.S.C. § 5851 (1988). Both parties were afforded an opportunity to file briefs on the issues raised in the Motion. See Secretary's Order Granting Opportunity to File Brief in Response to Motion to Reconsider Case, dated March 18, 1994. Complainant filed a brief responding to the Motion, but Respondent did not file a reply brief.

On February 14, 1994, I issued a Final Order Disapproving Settlement and Remanding Case, holding that the settlement agreement presented for approval contained a provision which was contrary to public policy and unenforceable in that it could restrict Complainant's communication of safety concerns to state and federal government agencies. In accordance with the decision

of the U.S. Court of Appeals for the Fifth Circuit in Macktal v. Secretary of Labor, 923 F.2d 1150 (5th Cir. 1991), I found that I could not sever that provision and enforce the remainder of the agreement without the consent of Complainant, as this would constitute a modification of a material term of a

negotiated settlement agreement without the consent of both parties. Accordingly, I disapproved the agreement and remanded the case to the ALJ.

Respondent now seeks reconsideration of the Final Order in this case, requesting that the Secretary approve the original settlement agreement with an attached formal release which discharges Complainant from any duties under the challenged provision (Paragraph 2). See "Attachment A." Respondent argues that by attaching this formal release to the settlement agreement it has unilaterally released Complainant from any duties and obligations of Paragraph 2, and that this release can be made a part of the public record in the case along with the original settlement agreement.

Complainant responds that Respondent's motion for reconsideration should be denied and that the attempt to apply traditional contract law to the instant situation must fail. Complainant argues that allowing Respondent to unilaterally amend the settlement agreement in this circumstance is tantamount to allowing modification of the settlement without Complainant's consent.

I have carefully reviewed the submissions of both parties and I deny the motion for reconsideration. The arguments advanced by Respondent, that application of traditional contract law allows for a unilateral release from the offending provision, and that Complainant has been allowed to communicate safety concerns without enforcement of the provision, were addressed in Macktal v. Brown & Root, Inc., Case No. 86-ERA-23, Sec. Ord. Disapproving Settlement and Remanding Case, Oct. 13, 1993, slip op. at 3-6. As explained in my Order in Macktal and in my Final Order in the present case, I have concluded that in light of the Court's holding in Macktal, and my responsibility in reviewing settlement agreements in ERA cases, I cannot approve this settlement agreement as written, nor can I modify the terms of the agreement without the consent of Complainant.

Accordingly, I deny Respondent's Motion to Reconsider.

SO ORDERED.

ROBERT B. REICH
Secretary of Labor

Washington, D.C.